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STAFF REPORT

BOARD MEETING DATE: December 9, 2014

DATE: November 14, 2014
TO: Board of County Commissioners
FROM: John Listinsky, Director of HR/Labor Relations
328-2089, jlistinsky@washoecounty.us
THROUGH: Joey Orduna Hastings, County Manager
328-2000, jhastings@washoecounty.us

SUBJECT: Recommendation to approve updates to the Washoe County Discrimination and Harassment Policy (exhibit 1) to include provisions addressing gender identity or expression added to the Nevada Revised Statutes in 2013. There is no fiscal impact associated with this action. (All Commission Districts)

SUMMARY

Recommendation to approve updates to the Washoe County Discrimination and Harassment Policy (exhibit 1) to include provisions addressing gender identity or expression added to the Nevada Revised Statutes in 2013. There is no fiscal impact associated with this action. (All Commission Districts)

Washoe County Strategic Objective supported by this item: Valued, engaged employee workforce.

PREVIOUS ACTION

The Washoe County Discrimination and Harassment Policy was last updated in January of 2009.

BACKGROUND

Gender identity or expression was added to the Nevada Revised Statutes (NRS 613.330) *Lawful employment practices* in 2013.

NRS 613,330 Unlawful employment practices: Discrimination on basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability or national origin; interference with aid or appliance for disability; refusal to permit service animal at place of employment.

FISCAL IMPACT

There is no fiscal impact associated with this action.

RECOMMENDATION

AGENDA ITEM # 8H3

Recommendation to approve updates to the Washoe County Discrimination and Harassment Policy (exhibit 1) to include provisions addressing gender identity or expression added to the Nevada Revised Statutes in 2013. There is no fiscal impact associated with this action.

POSSIBLE MOTION

Should the Board approve this recommendation, a possible motion would be:

“Move to approve updates to the Washoe County Discrimination and Harassment Policy (exhibit 1) to include provisions addressing gender identity or expression added to the Nevada Revised Statutes in 2013.”

WASHOE COUNTY DISCRIMINATION AND HARASSMENT POLICY

Washoe County maintains a strict policy prohibiting discrimination and harassment based on race, color, religion, sex, sexual orientation¹, gender identity or expression², national origin, age, or disability³ in hiring, promoting, termination, setting wages, testing, training, apprenticeship, and all other terms and conditions of employment⁴. These constitute unlawful employment practices under federal and/or state law and violate County policy. Actions, words, jokes, or comments based on an individual's race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, or disability will not be tolerated at any level of County employment by any officer, employee, volunteer, or member of the public. Discrimination and harassment create a negative work environment and affect the work performance of all employees.

While isolated incidents of harassment generally (unless severe) do not violate federal law, a pattern of such incidents may be unlawful. Therefore, it is the purpose of this policy to stop harassment before it arises to the level of a violation of law.

Definitions

For the purposes of this policy, the following definitions shall apply.

Discrimination: Any action⁵ that has an adverse effect on an individual or group of individuals because of their race, color, religion, sex, sexual orientation, national origin, age, or disability as legally defined by federal and/or state law.

Harassment: Includes, but is not limited to making disparaging remarks, gestures, or other actions based upon a legally protected class, designed to defame the character or question the integrity of protected individuals or groups; or such conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Employees: Public officers and individuals employed by Washoe County, except persons rendering services to the County or its townships on a fee, retainer or contract basis.

Applicant: Persons not otherwise employed by Washoe County as defined above, and who have made application for employment.

¹ This policy takes effect upon adoption by the Board of County Commissioner's. Sexual orientation was added to state law by Chapter 410 Statutes of Nevada, 1999, and becomes effective October 1, 1999.

² Gender identity or expression was added to NRS 613.330 in 2013.

³ NRS 281.370 also provides that a county, its departments, agencies, boards and appointing officers shall not refuse to hire a person, discharge or bar any person from employment, or discriminate against any person in compensation or in other terms or conditions of employment because, among other things, of his political affiliation, except when based upon a bona fide occupational qualification. Washoe County adheres to the provisions of NRS 281.370.

⁴ Federal and state law recognize that some employment actions may be based upon bona fide occupational qualifications and there is nothing in this policy which is intended to, nor does it limit, Washoe County's ability to take appropriate employment actions which are recognized as lawful under federal and state law.

⁵ As referred to in footnote 4, the County may take appropriate employment actions that may adversely affect an individual or group of individuals if the action is based upon a bona fide occupational qualification that is recognized as lawful under federal and state law.

Employee Rights Under the Discrimination And Harassment Policy

1. Every County employee has the right to a workplace free of discrimination or harassment as described above.
2. No County employee has to tolerate discrimination or harassment from any other County employee, either supervisory or non-supervisory in any terms and conditions of employment.
3. It is the right and responsibility of each employee to inform the individual whenever that person's actions become offensive and undesirable to the extent they could be considered discriminatory or harassing under this policy.
4. If an employee experiences conduct that they believe violates this policy, that individual should go to any one or all of the following persons for assistance:
 - a. Their immediate supervisor
 - b. Department Head
 - c. Human Resources Department
5. It is the right of all employees to report conduct they observe which is prohibited by this policy whether or not they are personally involved.
6. The County requests and encourages all employees to report conduct they observe which is prohibited by this policy whether or not they are personally involved. All supervisory employees must take appropriate steps to prevent and stop harassment, and may contact the Human Resources Department for guidance on what action should be taken. A supervisor or department head who receives a report pursuant to section 4 above, must contact the Human Resources Department. Failure to do so may result in discipline up to and including termination.
7. The County treats all complaints of discrimination or harassment seriously and all employees are expected to be candid and truthful during the investigation and to make a good faith effort in participating in the resolution of such complaints. Employees must cooperate in discrimination or harassment investigations and employees may be disciplined for failure to cooperate in job related investigations. If evidence arises that a participant in the investigation has made intentionally false statements, the employee will be disciplined up to and including termination.
8. Upon filing a complaint of discrimination or harassment, the Human Resources Director, the Human Resources Director's designee, and/or an outside consultant will immediately initiate an investigation to gather facts regarding the complaint. To the extent feasible, the County will protect the confidentiality of harassment allegations, providing information to only those with a need to know. The County cannot guarantee complete confidentiality because the County must conduct an effective investigation. The investigation shall be completed as quickly as practicable in light of the need to conduct an investigation which is accurate and fair to all persons involved.
9. No action will be taken against an employee for complaining or providing information related to a complaint, whether a violation of this policy is proven or not. Washoe County will not retaliate

against an employee for filing a complaint or providing information related to a complaint and will not tolerate nor permit retaliation by management, employees, or coworkers.

Applicant Rights Under the Discrimination And Harassment Policy

1. Every applicant has the right to consideration for employment free of discrimination or harassment as described above.
2. If an applicant perceives he/she is the target of discriminatory or harassing actions in seeking employment, that individual should go to the Human Resources Department for assistance.
3. The County treats all complaints of discrimination or harassment seriously and all applicants are expected to be candid and truthful during the investigation and to make a good faith effort in participating in the resolution of such complaints. When applicable, employees must cooperate in discrimination or harassment investigations and employees may be disciplined for failure to cooperate in job related investigations. If evidence arises that a participant in the investigation has made intentionally false statements, that employee will be disciplined up to and including termination.
4. Upon filing a complaint of discrimination or harassment, the Human Resources Director, Human Resources Director's designee, and/or an outside consultant will immediately initiate an investigation to gather facts regarding the complaint. The investigation shall be completed as quickly as practicable in light of the need to conduct an investigation that is accurate and fair to all persons involved. To the extent feasible, the identity of the charging party will be kept confidential and told to only those with a need to know.
5. No action will be taken against an applicant for complaining, whether a violation of this policy is proven or not. Washoe County will not retaliate against a complaining applicant for filing a complaint and will not tolerate nor permit retaliation by management or employees.

Any violation of this policy will result in immediate and appropriate disciplinary action, up to and including termination.

Nothing in this policy abrogates a person's rights or remedies, including due process rights to the extent applicable, as provided by contract, county code, state or federal law or the United States Constitution.

WASHOE COUNTY
DISCRIMINATION AND HARASSMENT COMPLAINT PROCEDURE

Every employee is entitled to work in an environment free from prohibited discrimination or harassment.

Every applicant has the right to consideration for employment free of discrimination or harassment as described above.

Investigation Process

The discrimination or harassment investigation will be conducted by the Human Resources Department or an outside consultant and proceed as follows:

1. Specific details will be obtained dealing with who, what, where, how often, who else, time place, history, contemporaneous events and reports.
2. A chronology of events will be prepared and confirmed with complainant.
3. Other persons may be interviewed.
4. The investigation will be limited to obtaining sufficient information for decision making. Every attempt will be made to complete the investigation within 30 working days.
5. Every attempt will be made to remain objective.
6. Evidence will be collected and evaluated to identify any inconsistencies between the people interviewed about the allegations, circumstances, location, dates and times, etc. Re-interviewing people may be necessary to clarify previous statements and/or determine what the basis is for inconsistency.
7. A written summary of the investigation, including the evidence used to determine the merit of each allegation, will be prepared. The written summary (record) and all supporting material will be maintained as a confidential record.
8. The Human Resources Department may also make recommendations based on findings of the investigation. Any such recommendations made will also be maintained as a confidential record.
9. The Department Head will make a final determination based upon facts gathered through the investigation and take appropriate action regarding resolution of the case. The Department Head's written resolution of the complaint shall be maintained as a confidential record.
10. If the findings from the investigation disclosed that the Washoe County Discrimination and Harassment Policy has been violated, the department head shall take appropriate corrective action and advise the complainant that appropriate corrective action has been taken.
11. All documentation will be marked confidential and filed in a secure place within the Human Resources Department.

Exhibit 1

12. The Department Head and/or Human Resources will follow up with the complainant to insure that the prohibited behavior has stopped and that he/she is not receiving reprisal actions.

Employees and applicants always have the option to file a complaint with the appropriate state or federal agency.